

1 In May of 2017, Plaintiff states that his medical condition worsened to the point that he
2 could not urinate. (*Id.* 6:10). When Plaintiff voiced this pain to his unit officer and medical
3 staff at the prison, they refused to assist him. (*Id.* 6:10–13). Plaintiff accordingly filed an
4 emergency grievance due to his pain, which eventually resulted in an operation at Valley
5 Hospital. (*Id.* 6:16–18).

6 In December of 2017, Plaintiff states that he again had problems with his catheter,
7 requiring a urethroplasty. (*Id.* 7:21–22). Nonetheless, as of July 2018, Plaintiff had not
8 received that surgery. (*Id.* 8:2). Plaintiff accordingly brought this lawsuit. The Court, in a
9 Screening Order, (ECF No. 6), permitted Plaintiff to proceed with that lawsuit on a claim of
10 Eighth Amendment Deliberate Indifference to Medical Needs against the NDOC Director
11 James Dzurenda, former NDOC Director James Cox, HDSP Wardens Brian Williams and
12 Dwight Neven, Medical Director Romeo Aranas, Nurses Jamie and Christy, and corrections
13 officer Leon.¹

14 Plaintiff received the surgery that he requested on September 20, 2018. (*See* Min. Order,
15 ECF No. 15). In the instant Motion, however, Plaintiff alleges that staff at the NDOC have not
16 provided him with immediate medical treatment, and that prison officials have been retaliating
17 against him. (Mot. Prelim. Inj. at 4, ECF No. 16). Specifically, Plaintiff states that the medical
18 staff has not given him medication necessary to remove or adjust his catheter correctly, and
19 failed to provide him with medical supplies to change his bandages as often as required. (*Id.* at
20 3). As a result, Plaintiff has suffered instances of removing used bandages after bleeding or
21 wearing bandages longer than appropriate. (*Id.* at 4). Plaintiff accordingly seeks preliminary
22 relief preventing any retaliation and requiring staff to provide his medical supplies. (*Id.*).²

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24 ¹ The Court's instructed Plaintiff to provide the names of unidentified defendants when Plaintiff learns of or
identifies them. (Screening Order 14:6–19). Plaintiff has not yet identified Defendants Jamie, Christy, and Leon.

25 ² Plaintiff also filed a Motion for Medication, (ECF No. 14). Plaintiff essentially makes the same allegations in
that motion as he does in the Motions for Preliminary Injunction and Temporary Restraining Order, (ECF Nos.
16, 17). The Court accordingly evaluates the merits of the filings together.

II. LEGAL STANDARD

Temporary restraining orders are governed by the same standard applicable to preliminary injunctions. *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111, 1126 (E.D. Cal. 2001). Furthermore, a temporary restraining order “should be restricted to serving [its] underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer.” *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974).

A preliminary injunction may be issued if a plaintiff establishes: (1) likelihood of success on the merits; (2) likelihood of irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). “Injunctive relief [is] an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Id.* at 22.

The Ninth Circuit has held that “‘serious questions going to the merits’ and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the Winter test are also met.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011). “In deciding a motion for a preliminary injunction, the district court ‘is not bound to decide doubtful and difficult questions of law or disputed questions of fact.’” *Int’l. Molders’ & Allied Workers’ Local Union No. 164 v. Nelson*, 799 F.2d 547, 551 (9th Cir. 1986) (quoting *Dymo Indus., Inc. v. Tapeprinter, Inc.*, 326 F.2d 141, 143 (9th Cir. 1964)).

“The urgency of obtaining a preliminary injunction necessitates a prompt determination and makes it difficult to obtain affidavits from persons who would be competent to testify at trial. The trial court may give even inadmissible evidence some weight, when to do so serves the purpose of preventing irreparable harm before trial.” *Flynt Distrib. Co., Inc. v. Harvey*, 734

1 F.2d 1389, 1394 (9th Cir. 1984) (citing 11 C. Wright and A. Miller, Federal Practice and
2 Procedure, Civil, § 2949 at 471 (1973)).

3 **III. DISCUSSION**

4 Defendants argue that the Court should deny Plaintiff's motions for preliminary
5 injunctive relief for two reasons. First, Defendants argue that because Plaintiff's underlying
6 complaint is for medical indifference, he cannot seek relief for an unrelated claim of retaliation.
7 (Resp. 3:20–26, ECF No. 19). Second, according to Defendants, Plaintiff has not provided
8 sufficient support to demonstrate medical indifference requiring injunctive relief. (*Id.* 4:4–7).
9 The below discussion addresses each of Defendants' arguments in turn, and finds that Plaintiff
10 has not provided sufficient support for injunctive relief.

11 **A. Relationship Between Injunctive Relief and Conduct in the Complaint**

12 Ninth Circuit precedent explains that “there must be a relationship between the injury
13 claimed in the motion for injunctive relief and the conduct asserted in the underlying
14 complaint.” *Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 810 F.3d 631, 636 (9th Cir.
15 2015). “The relationship between the preliminary injunction and the underlying complaint is
16 sufficiently strong where the preliminary injunction would grant ‘relief of the same character as
17 that which may be granted finally.’” (*Id.*).

18 Here, Plaintiff has not asserted facts to connect the underlying complaint with his
19 requested injunctive relief of, in part, preventing retaliation. Plaintiff speculates that retaliation
20 may be from his complaints because it “has happened since my lawsuit became known”; but
21 there are no allegations of Defendants in this case committing the retaliation, nor that the
22 retaliation is actually caused by this litigation. (Mot. Prelim. Inj. at 4, ECF No. 16). Similarly,
23 Plaintiff vaguely states that a nurse told him “medical [is] not to [sic] happy with you for some
24 reason,” yet there are no allegations that the medical staff are acting due to the lawsuit. Indeed,
25 Plaintiff states in his related Motion for Medication that he is “not sure if this is retaliatory

1 because I filed my civil suit.” (Mot. Medication at 2, ECF No. 14). Further, Plaintiff’s request
2 for injunctive relief is not limited to securing medical treatment or related relief. It instead
3 seeks an injunction going as far as restraining prison staff from “shaking [his] cell down and
4 tearing it up during shower or whenever [he] is out of the cell.” (Mot. Prelim. Inj. at 2, ECF No.
5 16). However, without a relationship between the injunctive relief requested and the
6 underlying claim for deliberate indifference to medical needs, the Court “lacks authority to
7 grant the relief.” *Pac. Radiation Oncology, LLC.*, 810 F.3d at 635. The Court accordingly
8 evaluates the merits of Plaintiff’s motion for injunctive relief in the limited context of actions
9 related to his underlying claim for deliberate indifference to medical needs.

10 **B. Injunctive Relief**

11 To earn preliminary relief, Plaintiff must first make a clear showing that he has a
12 likelihood of success on the merits and that he will suffer irreparable harm without injunctive
13 relief. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008) (citation
14 omitted). Further, where “a party seeks mandatory preliminary relief that goes well beyond
15 maintaining the status quo *pendente lite*, courts should be extremely cautious about issuing a
16 preliminary injunction.” *Martin v. International Olympic Committee*, 740 F.2d 670, 675 (9th
17 Cir. 1984). Thus, an award of mandatory preliminary relief is not to be granted unless “the
18 facts and law clearly favor the moving party” and “extreme or very serious damage will result.”
19 *Anderson v. United States*, 612 F.2d 1112, 1114–15 (9th Cir. 1979) (citation omitted). “[I]n
20 doubtful cases” a mandatory injunction will not issue. *Id.*

21 Plaintiff fails to show that he will suffer irreparable harm without preliminary relief.
22 Plaintiff first states he suffers pain from his bandages and the lack of immediate medical
23 treatment; however Plaintiff also explains that, after requesting a medical appointment due to
24 bleeding, a night nurse came to his door and explained that she was going to get a doctor “to
25 see you this week.” (Mot. Prelim. Inj. At 3, ECF No. 16). The Court is unaware if Plaintiff

1 received this medical care, as Plaintiff did not file a reply to the Government's response. (*See*
2 Min. Order, ECF No. 19). However, because Plaintiff states that he is receiving medical care at
3 this time, the Court cannot conclude that he is likely to suffer irreparable injury without a court
4 order. *See Crittendon v. Lombardo*, No. 217-cv-01700-RFB-PAL, 2018 WL 1567845, at *3 (D.
5 Nev. Mar. 30, 2018) (denying a prisoner's motion for temporary restraining order, in part,
6 because "Plaintiff concedes that he did receive medical treatment, albeit not immediately").
7 Thus, Plaintiff has not currently provided the Court with sufficient facts to warrant entitlement
8 to injunctive relief. Nonetheless, the concern with whether Plaintiff actually received medical
9 care still exists, and Plaintiff may file a renewed Motion for Preliminary Injunction if new facts
10 reveal that he did not receive the care previously requested.

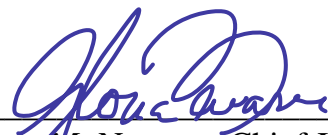
11 **IV. CONCLUSION**

12 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Preliminary Injunction, (ECF
13 No. 16), is **DENIED without prejudice**.

14 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Temporary Restraining Order,
15 (ECF No. 17), is **DENIED without prejudice**.

16 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Medication, (ECF No. 14), is
17 **DENIED**.

18 **DATED** this 11 day of January, 2019.

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21 _____
22 Gloria M. Navarro, Chief Judge
23 United States District Court
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